

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

WILLIAM J. WINDHAM and )  
GWENDOLYN JOYCE WINDHAM )  
                              )  
Plaintiffs,                 )  
                              )  
v.                            )                           CASE NO. 3:05 CV-472-M  
                              )  
B.W. CAPPS & SONS, INC. )  
                              )  
Defendant.                 )

**DEFENDANT'S PROPOSED JURY INSTRUCTIONS**

Comes now, Defendants herein and submits its proposed jury instructions. Pursuant to the Court's advice, Defendant understands the Court will give general instructions to the jury concerning such things as burden of proof, credibility of witnesses, weight of evidence and other such matters. Therefore, Defendant has submitted jury charges only in regard to the issue of liability.

This 22<sup>nd</sup> day of May, 2006.

/s/*James R. McKoon, Jr.*

---

JAMES R. McKOON, JR. (MCK020)  
Attorney for Defendant  
P. O. Box 3220  
Phenix City, Alabama 36868-3220  
(334) 297-2300

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

WILLIAM J. WINDHAM and )  
GWENDOLYN JOYCE WINDHAM )  
                              )  
Plaintiffs,                 )  
                              )  
v.                           )                           CASE NO. 3:05 CV-472-M  
                              )  
B.W. CAPPS & SONS, INC. )  
                              )  
Defendant.                 )

**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 1**

CONTRIBUTORY NEGLIGENCE APJI 30.00

Contributory negligence is negligence on the part of the Plaintiff that proximately contributed to the alleged injury. [In this case, Defendant contends that the Plaintiff, William J. Windham, was guilty of contributory negligence and as such cannot recover any damages against the Defendant, B.W. Capps].

GIVEN \_\_\_\_\_

DENIED \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

WILLIAM J. WINDHAM and )  
GWENDOLYN JOYCE WINDHAM )  
                              )  
Plaintiffs,                 )  
                              )  
v.                           )                           CASE NO. 3:05 CV-472-M  
                              )  
B.W. CAPPS & SONS, INC. )  
                              )  
Defendant.                 )

**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 2**

BURDEN OF PROOF APJI 30.01

The Defendant, B.W. Capps' answer raising contributory negligence is an affirmative defense. Therefore, the burden is upon the Defendant, B.W. Capps, to reasonably satisfy you from the evidence as to the truth of all the material allegations of this defense.

GIVEN \_\_\_\_\_

DENIED \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

WILLIAM J. WINDHAM and )  
GWENDOLYN JOYCE WINDHAM )  
                              )  
Plaintiffs,                 )  
                              )  
v.                           )                           CASE NO. 3:05 CV-472-M  
                              )  
B.W. CAPPS & SONS, INC. )  
                              )  
Defendant.                 )

**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 3**

EFFECT OF CONTRIBUTORY NEGLIGENCE APJI 30.02

If you are reasonably satisfied from the evidence that the Plaintiff, William J. Windham, was guilty of contributory negligence, then the Plaintiffs (both of them) cannot recover from any initial simple negligence of the Defendant, B.W. Capps.

GIVEN \_\_\_\_\_

DENIED \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

WILLIAM J. WINDHAM and )  
GWENDOLYN JOYCE WINDHAM )  
                              )  
Plaintiffs,                 )  
                              )  
v.                            )                           CASE NO. 3:05 CV-472-M  
                              )  
B.W. CAPPS & SONS, INC. )  
                              )  
Defendant.                 )

**DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 4**

VOLUNTARY INTOXICATION APJI 30.04

[The Defendant, B.W. Capps, has offered testimony in this case through its witnesses that the Plaintiff, William J. Windham, may have been drinking alcoholic beverage at the time of his fall].

A person who voluntarily becomes intoxicated is required to exercise the same degree of care as is required of a sober person under the same or similar circumstances. It is proper for you to consider whether or not the Plaintiff, William J. Windham, was intoxicated, together with all other facts and circumstances, in determining whether or not the Plaintiff was contributorily negligent at the time of the occurrence.

GIVEN \_\_\_\_\_

DENIED \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the above and foregoing upon the following attorneys of record by electronic noticing procedures set forth by this Court as set forth below:

James Balli, Esq.  
Sams, Larkin & Huff  
376 Powder Springs Street  
Suite 100  
Marietta, Georgia 30064-3448

This 22<sup>nd</sup> day of May, 2006.

*/s/James R. McKoon, Jr.*

---

OF COUNSEL